IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1450 OF 2006

Sandoz Private Limited .. Petitioners

V/s

Union of India & Ors. .. Respondents

Mr. Naresh Thacker with Mr.M.R. Baya for the Petitioners.

Mr.M.I. Sethna, Senior Advocate with Mr.A.M. Sethna for the Respondents.

CORAM : H.L. GOKHALE & J.P. DEVADHAR, JJ.

DATE : 15th September 2006

P.C. :

1. Heard Mr.Thacker in support of this petition and Mr.Sethna, Senior Advocate for the Respondents.

2. Rule. Rule is made returnable forthwith.

3. Replies have been filed and so also the rejoinder.

4. The case of the Petitioners is that the imported goods stored in a private bonded warehouse were destroyed by fire and since the goods are not removed from the warehouse, the question of paying duty under

section 71 of the Customs Act does not arise and therefore various demand notices issued are without jurisdiction. As against that, the case of the Revenue is that the goods damaged due to fire have not deteriorated to the extent that the goods cannot be reprocessed and therefore the duty is payable.

5. Admittedly, the Revenue has not issued any show cause notice before demanding duty on goods stored in the warehouse which were destroyed in fire. The question of remission of duty would arise only after it is found that the duty is payable. Even the letter dated 6th July 2004 rejecting the application for remission of duty has been issued without giving any opportunity of hearing to the Petitioners. In this view of the matter, the impugned notices mentioned in prayer (a) of the petition are quashed and set aside.

5. We make it clear that it will be open to the Revenue to issue a show cause notice, hear the Petitioners and thereafter pass a reasoned order in accordance with law.

6. Rule is made absolute as above with no order as to costs.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR J.)